

People v Black

2016 NY Slip Op 33016(U)

October 11, 2016

County Court, Dutchess County

Docket Number: 2016/1178

Judge: Peter M. Forman

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STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

INDEX NO.: 2016/1178

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER

Plaintiff,

Ind. No. 57/2016

- against -

William V. Grady,
District Attorney
by: Michael W. Brady, Esq.

MARCUS ANTHONY BLACK

Steven K. Patterson, Esq.
Counsel for Defendant

Defendants

HON. PETER M. FORMAN, County Court Judge

The following papers were read and considered in deciding this motion:

PAPERS NUMBERED

NOTICE OF OMNIBUS MOTION.....	1
AFFIRMATION IN SUPPORT.....	2
ANSWERING AFFIRMATION.....	3

Defendant stands accused by the Grand Jury of the County of Dutchess of one count of Burglary in the Second Degree, a Class C Violent Felony, in violation of §140.25(2) of the Penal Law; and one count of Criminal Possession of Stolen Property in the Fourth Degree, a Class E Felony, in violation of §165.45(1) of the Penal Law.

By Omnibus Motion, Defendant seeks various forms of relief of which this Court will address in order:

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GRAND JURY MINUTES AND INDICTMENT

With respect to Defendant's motion for inspection of the Grand Jury minutes and dismissal or reduction of the indictment, the same is granted to the extent that the Court has reviewed such minutes for the purpose of determining Defendant's motion to dismiss or reduce the charges to a lesser included offense upon the grounds that said inspection would allegedly show that the evidence upon which the indictment was based was legally incompetent, insufficiently corroborated or otherwise inadmissible. [CPL §190.65(1)]. In assessing the legal sufficiency of the evidence presented, it is noted that the applicable standard of review is proof of a *prima facie* case, not proof beyond a reasonable doubt. [*People v. Gordon*, 88 N.Y.2d 92 (1996)].

"In the context of a motion to dismiss an indictment, the sufficiency of the People's presentation 'is properly determined by inquiring whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury.'" [*People v. Galatro*, 84 N.Y.2d 160, 163 (1994), quoting *People v. Jennings*, 69 N.Y.2d 103, 114 (1986)]. "The People are required to make out a *prima facie* case that the accused committed the crime charged by presenting legally sufficient evidence establishing all of the elements of the crime." [*Id.* at 164]. "The inquiry of the reviewing court is limited to ascertaining the 'legal sufficiency' of the evidence, and does not include weighing the proof or examining its adequacy at the grand jury stage." [*People v. Jensen*, 86 N.Y.2d 248, 252 (1995)]. CPL §70.10 defines "legally sufficient evidence" as 'competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof.'

[* 3]

Having examined the minutes of the testimony before the Grand Jury of Dutchess County, this Court determines that, viewing this evidence in the light most favorable to the People, the indictment is based upon evidence which is legally sufficient to establish that Defendant committed the offense as set forth therein and competent and admissible evidence before the Grand Jury provides reasonable cause to believe that Defendant committed that offense [CPL §190.65; People v. Jensen, 86 NY2d 248 (1995); People v. Jennings, 69 N.Y.2d 103 (1986); People v. Swamp, 84 N.Y.2d 725(1994); People v. Haney, 30 N.Y.2d 328 (1972)].

GRAND JURY PROCEEDINGS

“A grand jury proceeding is defective warranting dismissal of the indictment [pursuant to CPL 210.35(5)] only where the proceeding fails to conform with the requirements of CPL article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result.” [People v. Burch, 108 A.D.3d 679, 680 (2d Dept. 2013). See also People v. Moffitt, 20 A.D.3d 687, 688 (3d Dept. 2005)]. “The exceptional remedy of dismissal under CPL 210.35(5) should be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury.” [People v. Miles, 76 A.D.3d 645, 645 (2 Dept. 2010), quoting People v. Huston, 88 N.Y.2d 400, 409 (1996). See also People v. Reed, 71 A.D.3d 1167, 1168 (2d Dept. 2010); People v. Ramirez, 298 A.D.2d 413 (2d Dept. 2002)].

This Court finds nothing that would render this indictment defective. Accordingly, Defendant’s motion to dismiss the remaining counts of the indictment on the grounds that the Grand Jury proceedings were defective is denied.

GRAND JURY INSTRUCTIONS AND MINUTES

This Court has also reviewed the instructions given by the Assistant District Attorney to the Grand Jury and finds that the same satisfy the applicable standards [*People v. Calbud, Inc.*, 49 NY2d 389(1980)]. Accordingly, Defendant's motion to dismiss or reduce the remaining counts of the indictment is denied.

Defendant's motion to be provided with a copy of the Grand Jury minutes is denied in the exercise of discretion. Defendant's motion to be provided with a copy of the legal instructions given to the Grand Jury is also denied in the exercise of discretion.

DISCOVERY

Defendant's motion for discovery is granted to the extent that the District Attorney is directed to make available to Defendant's attorney any and all property and information required to be disclosed pursuant to CPL 240.20.

On May 27, 2015, the City of Poughkeepsie City Court (Mora, J.) issued a search warrant in connection with this case. This search warrant, along with the underlying warrant application and the subsequent inventory return receipt, are discoverable pursuant to CPL §240.20(1)(h).

Defendant's discovery motion also seeks disclosure of a substantial amount of Rosario and other material that is beyond the scope of CPL §240.20. The People are under no obligation to disclose this material at this stage of the proceedings. Therefore, Defendant's motion seeking production of this material is denied, subject to the People's compliance with their obligations under CPL §240.43 and §240.45, and with their continuing obligations under Brady v. Maryland and its progeny.

SUPPRESSION OF PHYSICAL EVIDENCE

On May 27, 2015, the City of Poughkeepsie City Court (Mora, J.) issued a search warrant in connection with this case. That search warrant authorized law enforcement authorities to search the third floor apartment at 83 South Hamilton Street. The People have provided Defendant with copies of the search warrant, warrant application, and inventory return receipt.

Defendant now moves to controvert the search at warrant, and to suppress all evidence that was obtained upon execution of that warrant.

“It is well settled that a presumption of validity attaches to a warrant since there has already been a judicial review as to its justification.” [*People v. Traymore*, 241 A.D.2d 226 (1st Dept. 1998)]. Therefore, a defendant has the initial burden of demonstrating that there is an issue of fact regarding the sufficiency of a search warrant application. [*People v. Glen*, 30 N.Y.2d 252, 262 (1972)]. When a defendant’s motion papers fail to demonstrate the existence of a question of fact relating to probable cause, and the papers in support of the warrant are legally sufficient, denial of the motion without a hearing is appropriate. [*id.* at 256, 262].

Here, the search warrant application contained sufficient information to support a reasonable belief that evidence of illegal activity would be obtained from the third floor apartment at 83 South Hamilton Street. Therefore, Defendant’s motion to suppress the physical evidence based on the alleged insufficiency of the search warrant is denied because “the legality of the search was established by the warrant and its supporting papers, and there was no factual dispute requiring a hearing.” [*People v. Meller*, 68 A.D.3d 671, 672 (1st Dept. 2009)]. See also *People v. Murray*, 136 A.D.3d 714, 714 (2d Dept. 2016); *People v. Corr*, 28 A.D.3d 574, 575 (2d Dept. 2006); *People v. Allen*, 209 A.D.2d 425, 425 (2d Dept. 1994); *People v. Badia*, 232 A.D.2d 241, 241 (1st Dept. 1996); *People v. Sinatra*, 102 A.D.2d 189, 191 (2d Dept. 1984)].

[* 6]

Defendant also moves to suppress all evidence that was obtained from the third floor apartment at 83 South Hamilton Street that was outside the scope of the search warrant. The People assert that those items were seized with the verbal and written consent of Elisa Torres, who was a lessee of that apartment when the search warrant was executed. The People also assert that the police were entitled to seize these items because they were clearly the proceeds of criminal activity.

Defendant's motion is granted to the limited extent that the court will conduct a hearing to determine whether items that were outside the scope of the search warrant were seized over Defendant's express objection. [*Georgia v. Randolph*, 547 U.S. 103 (2006) (finding that, when police conduct a search of the common area of a premises with the consent of one occupant, but over the express objection of another occupant, any further search would be unreasonable as to the objecting occupant). *But see People v. Watson*, 101 A.D.3d 913 (2d Dept. 2012) (finding that, when police conduct a search of the common area of a premises with the consent of one occupant, the police are under no obligation to seek the affirmative consent of the other occupant, and that the onus is on that other occupant to object)]. In the event that the evidence at the hearing demonstrates that Defendant expressly objected to the search of the apartment, the Court will also consider whether the police were authorized to seize these items because they were clearly the proceeds of criminal activity.

SUPPRESSION OF STATEMENTS

Defendant's motion to suppress statements alleged to have been made by Defendant as contained in the CPL §710.30 notice served by the People is granted solely to the extent that a

[* 7]

Huntley hearing will be held prior to trial. [CPL§710.60[4]; People v. Huntley, 15 N.Y.2d 72 (1965)].

SUPPRESSION OF IDENTIFICATION

Defendant has moved to suppress identification testimony at trial on the grounds that the photo array identification procedure identified in the People's CPL §710.30 Notice was unduly suggestive. That motion is granted solely to the extent that a Wade hearing will be held prior to trial. [CPL§710.60[4]; People v. Boyer, 6 N.Y.3d 427, 431 (2006)].

BRADY AND IMPEACHMENT MATERIAL

Defendant's motion to be provided with all Brady and impeaching material is granted to the extent that the People shall provide Defendant with any evidence in their possession or control which may tend to exculpate Defendant or which is otherwise favorable to him as provided in Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Bagley, 473 U.S. 667 (1985). The People are reminded of their continuing obligation pursuant to Brady and its progeny with respect to the delivery of any materials now in their possession or control, or which may hereafter come into their possession or control.

Defendant's motion for production of exculpatory information also includes a request for information regarding any cooperation agreements that any witnesses have entered into, or may enter into, with the District Attorney's Office. Any cooperation agreement relating to the testimony that a witness will provide at Defendant's trial is Brady material. [People v. Steadman, 82 N.Y.2d 1 (1993)]. Therefore, in the event that any such agreement exists, or is entered into during the pendency of this matter, the People shall disclose the full terms of that

agreement to Defendant sufficiently in advance of the cooperating witness' testimony so as to provide Defendant with a meaningful opportunity to use the allegedly exculpatory material to cross-examine the cooperating witness. [*People v. Leavy*, 290 A.D.2d 516 (2d Dept. 2002)].

SANDOVAL

The Court grants Defendant's motion for a Sandoval hearing to the extent that a hearing is ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the Defendant elects to testify at trial. See *People v. Sandoval*, 34 NY2d 371 (1974). The District Attorney has provided Defendant's attorney with a true copy of Defendant's Division of Criminal Justice Services Summary Case History. The Court orders the District Attorney to disclose to Defendant's attorney any and all acts upon which it intends to impeach Defendant, including without limitation all prior instances of Defendant's alleged prior uncharged criminal, vicious or immoral conduct that the People intend to use at trial for the purposes of impeaching Defendant's credibility. [CPL §240.43].

VENTIMIGLIA

Defendant has requested that the People to supply Defendant with notice of all specific instances of prior uncharged conduct which the People will seek to offer against Defendant at trial upon its direct case.

The People have not made any application to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case pursuant to *People v Ventimiglia*, 52 N.Y.2d 350 (1981). If the People intend to make an application pursuant to *People v Ventimiglia*, they should do so prior to the Sandoval hearing ordered herein.

PRE-TRIAL HEARINGS

Defendant's request that any pre-trial hearings be conducted at least twenty (20) days prior to trial is denied. All pre-trial hearings will be scheduled at the convenience of the Court and the parties herein, and transcripts will be made available to the defense prior to the commencement of trial testimony.

LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is granted to the extent that Defendant may file any motion that Defendant deems fit within the forty-five (45) day time limit. Subsequent to the forty-five (45) day time limit, Defendant may make further motions only upon a showing of good cause.

So Ordered.

Dated: Poughkeepsie, NY
October 11, 2016



PETER M. FORMAN
COUNTY COURT JUDGE

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